



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2015-0628; FRL-9933-77-OECA]

Public Comment on EPA's National Enforcement Initiatives for Fiscal Years 2017-2019.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on national enforcement initiatives (NEI) for fiscal years 2017-2019. EPA selects these initiatives every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor and where federal enforcement attention can make a difference. The current initiatives as well as potential new initiatives under consideration are described in the SUPPLEMENTARY INFORMATION section, with additional descriptions and data on current initiatives available on our website: <http://www2.epa.gov/enforcement/national-enforcement-initiatives>.

DATES: Comments must be received on or before October 14, 2015.

ADDRESSES: Submit your comments via www.regulations.gov, identified by Docket ID No. EPA-HQ-OECA-2015-0628; FRL-9933-77-OECA. Follow the on-line instructions for submitting comments.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2015-0628. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Daniel Palmer, Deputy Director, Planning Measures and Oversight Division, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-5034; fax number: 202-564-0027; email address: Palmer.Daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What are EPA Enforcement and Compliance National Initiatives?

EPA is soliciting public comment and recommendations on national enforcement initiatives to be undertaken in fiscal years 2017–2019. EPA selects these initiatives every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor and where federal enforcement attention can make a difference.

This notice is an Agency planning document and does not impose any legally binding requirements on EPA or any outside parties.

II. On what is EPA requesting comment?

EPA's Office of Enforcement and Compliance Assurance is collecting comment on which of the current national enforcement initiatives should continue, be expanded or returned to the standard enforcement program. Current initiatives may be carried forward, refined or concluded for the FY 2017-2019 cycle. EPA is also seeking comment on the list of potential NEIs described above which are currently being considered for the FY 2017-2019 national enforcement cycle. The public is invited to propose any other areas for consideration, keeping in mind resource constraints.

III. What are the current FY 2014-2016 National Enforcement Initiatives (which can be extended)?

For the six current initiatives, EPA invites the public to comment on whether each NEI should continue into the FY 17-19 cycle or return to the standard enforcement program for completion

of remaining work. EPA also invites comment on whether EPA should add new areas of focus within those NEIs that are recommended for extension.

(1) Reducing air pollution from the largest sources. This national enforcement initiative has focused on ensuring that large industrial facilities comply with the Clean Air Act when building new facilities or making modifications to existing facilities. In keeping with the purpose of NEIs to address the largest, highest impact sources of pollution, this NEI has been centered on industrial sectors with the largest amounts of air pollution that can significantly impact human health: coal fired power plants, as well as acid, glass and cement manufacturing facilities. Large percentages of facilities in these sectors are now under enforceable commitments to reduce pollution, although there are still violating facilities with substantial pollution. For coal-fired power plants alone, the injunctive relief in these cases, when fully implemented, will mean reductions in serious air pollution of nearly 3 million tons each year. Although significant progress has been made to address noncompliance in several sub-categories of this initiative, more work may be needed on new cases and EPA has an on-going commitment to monitor progress under existing consent agreements to assure that the required actions are implemented and air pollution reductions from completed enforcement actions actually occur.

(2) Cutting toxic air pollution. Toxic air pollution from industrial facilities is a national problem, which is nowhere more urgent than in the fence line communities that bear the brunt of unlawful pollution. This national enforcement initiative has focused on the substantial illegal emissions of hazardous air pollutants (HAPs) from leaks, flares, and excess emissions at industrial facilities that are putting neighbors' health at risk. Through active investigations and

use of innovative monitoring technologies, EPA has identified many violating facilities where toxic air pollution was much greater than what had previously been estimated. EPA has conducted hundreds of evaluations and brought numerous enforcement actions to require these facilities to reduce pollution and to comply with the law. Based on what we have learned about the sources of the largest toxic emissions and the causes of the releases, EPA is considering expanding this initiative into new focus areas and sources where noncompliance is a growing threat, as described further below.

(3) Assuring energy extraction and production activities comply with environmental laws.

EPA has been working with states to assure that domestic land-based natural gas extraction and production is done in an environmentally protective manner and in compliance with environmental laws. Natural gas development activities in energy rich areas of the country have led to concerns about increases in air pollution levels, pollution of surface and ground waters, the safety of community drinking water supplies, and damage to ecosystems. EPA has brought a number of high impact enforcement actions to address serious violations in this industry. This sector continues to develop and change rapidly, and EPA is continuing to evaluate the best way to address pollution problems in this sector, including opportunities for greater use of advanced monitoring.

(4) Reducing pollution from mineral processing operations: Mining and mineral processing facilities generate more toxic and hazardous waste than any other industrial sector. Improper handling of those wastes can lead to expensive cleanups that can cost taxpayers billions of dollars. This NEI has been focused on the largest and highest risk mineral processing operations,

to ensure that they properly manage their wastes and have sufficient financial assurance to properly close facilities. This NEI has resulted in a number of large, high impact cases to ensure proper handling of these hazardous wastes. By the end of FY16 many of the highest risk mineral processing facilities are expected to be under enforceable agreements or orders that will require them to properly address hazardous waste.

(5) Keeping raw sewage and contaminated stormwater out of our Nation's waters:

Discharges of raw sewage and contaminated stormwater are a serious pollution problem in waters across the country. Under this initiative, EPA has tackled significant water pollution problems within communities that result from Clean Water Act noncompliance. Many communities with raw sewage discharges are now under enforceable commitments to reduce pollution, including numerous communities that have embraced green infrastructure as a solution. Green infrastructure can provide benefits beyond compliance with the Clean Water Act and can be more cost effective. EPA will need to continue to monitor implementation of these long-term agreements, and to adapt them to changing circumstances and new information, such as the increasing commitment of cities to implement green infrastructure, changes in financial capability, or technological advances. Municipal stormwater pollution also remains an important clean water challenge in communities around the country.

(6) Preventing animal waste from contaminating surface and ground water: Animal waste is a significant contributor to serious water quality issues and can result in environmental and human health risks such as water quality impairment, fish kills, algal blooms, contamination of drinking water sources, and transmission of disease-causing bacteria and parasites associated

with food and waterborne diseases. The focus of this national enforcement initiative has been reduction of animal waste pollution that impairs our nation's waters, threatens drinking water sources, and adversely impacts communities. These impacts are often acutely felt in rural communities of environmental justice concern. EPA's enforcement strategy for this NEI has focused on animal agriculture operations that have a big impact or where action is necessary to ensure that all operations in the sector play by the same rules. For the future, EPA is considering an updated strategy to explore the use of nutrient recovery technologies that show promise to reduce water pollution, implementation of instream monitoring to demonstrate impacts to water quality and identify violations, as well as new tools to identify the most significant violators.

IV. What are the FY2017-2019 potential NEIs currently under consideration?

In addition to evaluating the current NEIs to determine which should continue and potentially be expanded and which can return to the standard enforcement program, EPA is also considering new initiatives for FY 2017-2019. We are very mindful that our resources have been declining over the past five years, so we need to keep resource constraints very much in mind as we consider taking on new work. A brief description and pertinent background information for each potential new FY 2017-2019 initiative is provided below.

(1) Protecting Communities from Exposure to Toxic Air Emissions. EPA is currently implementing an air toxics NEI and is considering expanding the initiative to include emissions from additional sources and industries. Emissions of toxic air pollutants continue to be a concern that threatens the health of communities. EPA seeks public comment on

whether to significantly increase our commitment to addressing this national problem by expanding into one or both of the following two areas:

Organic Liquid Storage Tanks: In addition to the current areas of focus -- flares and leaks -- large storage tanks can be significant sources of excess air emissions at many sites, including terminals, refineries, and chemical plants. Using advanced monitoring, including optical remote sensing techniques, such as differential absorption light detection and ranging technology and optical gas imaging cameras, EPA has observed that volatile organic compound (VOC) and hazardous air pollutant (HAP) emissions from storage tanks can greatly exceed the permitted and/or estimated emissions. In many instances, EPA has observed that emissions are the result of violations, including inadequate maintenance of the tanks and associated emissions controls, design flaws, and expansion of production volumes without corresponding increases in emissions control. There are thousands of tanks operating in the United States at refineries, chemical plants, and other bulk storage facilities that are located in ozone nonattainment areas, communities of environmental justice concern, or other areas with sensitive populations.

Hazardous Waste Air Emissions: The handling of hazardous waste can also result in toxic air emissions, which present many of the same public health risks that led to the selection of air toxics as an NEI. In addition, these hazardous wastes, if improperly handled, can also present a potential for increased fire or explosion risk due to their high corrosivity and ignitability. Such catastrophic events not only create a safety risk for workers and the surrounding community, they also create the potential for significant

associated releases of toxic air pollutants that have both acute and chronic health effects. Based on EPA's observations during field work, as well as the publicly available compliance information on Enforcement and Compliance History Online (ECHO), it appears that widespread violations of the air emission requirements under the Resource Conservation and Recovery Act (RCRA) are a significant contributing cause of these problems. Violations observed include the improper use of monitoring and control devices by facilities, resulting in releases of emissions from RCRA regulated units. Of particular concern are the toxic air emissions that result from the handling of hazardous waste at treatment, storage, and disposal facilities (TSDFs) and large quantity generators (LQGs) that are not properly controlling hazardous waste releases to the air as required by regulation.

One of the reasons to consider these areas for an expanded NEI is to support a level playing field, so that all industries with toxic air releases, which usually operate in multiple states across the country, are held to a common, consistent standard. EPA invites comment on whether to expand our work to reduce toxic air emissions to these two new focus areas.

(2) Keeping Industrial Pollutants out of the nation's Waters Many waters (including sediments) around the country are polluted by nutrients and metals. Certain industrial sectors contribute a disproportionate amount of the pollution over discharge limits. This potential NEI would focus on the top sectors that have many violations and are responsible for contributing to surface water pollution and putting our drinking water at risk: mining, chemical manufacturing, food processing and primary metals manufacturing. A number of

facilities in the top sectors discharge pollution in excess of their permit limits. In addition to being a focused attempt to significantly reduce serious water pollution across the nation, selecting this as an NEI would allow for a national approach for those companies that operate in more than one state and would support a consistent national strategy to achieve compliance across industry sectors.

(3) Reducing the Risks and Impacts of Industrial Accidents and Releases. It is an all too common occurrence for industrial facilities to have serious accidents and explosions that kill or injure employees and emergency responders, and release chemicals that threaten neighboring communities. Thousands of facilities across the country produce, process, store, and use extremely hazardous substances that are acutely toxic or can cause serious accidents. These facilities vary widely in nature, from municipal water treatment plants to the largest refineries in the United States and are often extremely large and complex. Across the country, approximately 150 catastrophic accidents occur per year among the universe of regulated facilities. These accidents pose a risk to neighboring communities and workers because they result in fatalities, injuries, significant property damage, evacuations, sheltering in place, or environmental damage. Approximately 2,000 facilities are currently considered “high-risk” because of their proximity to densely populated areas, the quantity and number of extremely hazardous substances they use, or their history of significant accidents.

Most of these serious accidents are preventable if the necessary precautions and actions are taken. Failure to adequately train personnel, maintain equipment, conduct routine inspections, or take other common sense precautions contribute to the dangers these facilities

pose to their workers and to surrounding communities. This potential NEI would be a targeted focus on the facilities and the chemicals that pose the greatest risks, with a goal of increasing industry attention to preventing accidents, instead of addressing problems after accidents happen, thereby reducing the risk of harm to communities and workers.

For all of the NEIs that EPA ultimately selects for FY17-19, we intend to incorporate Next Generation Compliance approaches into our work. Our goal will be to use the most current monitoring technologies, data analytics and transparency, as well as the latest thinking on what drives better compliance, to get better results even in a time of serious resource constraints. We invite comment on what some of these Next Gen opportunities might be for the continuing and potential new NEIs.

EPA will consider all public comments in determining whether and to what extent to continue or expand an initiative or to select a new one, but will not respond to the comments received. Final selection will be incorporated into the EPA Office of Enforcement and Compliance Assurance FY 2017 National Program Manager Guidance Addendum that provides national program direction for all EPA regional offices.

Information in support of this Notice of Public Comment is available via the Internet at:

<http://www2.epa.gov/enforcement/national-enforcement-initiatives>.

V. Can the deadline for comments be extended?

No. EPA will include the final selection of the national enforcement initiatives in the National

Program Manager Guidance (NPM Guidance) to enable EPA, states, and federally-recognized Indian tribes (tribes) to effectively align their joint implementation of environmental laws to achieve mutual goals. The NPM guidance must be timely released for public comment in order to allow the EPA regions, as well as states and tribes with approved programs, to consider the NPM Guidance fully in their annual planning processes which direct the use of resources according to the fiscal calendar. As a result, EPA must receive public comments by October 14, 2015 in order to make selections in keeping with this schedule.

Dated: September 3, 2015.

Betsy Smidinger,

Acting Director, Office of Compliance.

[FR Doc. 2015-23056 Filed: 9/14/2015 08:45 am; Publication Date: 9/15/2015]